



BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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Rulemaking for Adoption of a General
Order and Procedures to Implement the
Digital Infrastructure and Video
Competition Act of 2006.

R. 06-10-005
(Filed October 5, 2006)

**OPENING COMMENTS OF THE DIVISION OF RATEPAYER
ADVOCATES ON COMMISSIONER CHONG'S PROPOSED DECISION
RESOLVING DIVCA PHASE II ISSUES**

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I. INTRODUCTION AND SUMMARY

Pursuant to Rule 14.3 of the California Public Utilities Commission's (Commission) Rules of Practice and Procedure, the Division of Ratepayer Advocates (DRA) submits these Comments on Commissioner Chong's Proposed Decision (PD) Resolving Phase II Issues in the Digital Infrastructure and Video Competition Act (DIVCA) Rulemaking. DRA supports the PD's proposed low-income and general build-out requirements for smaller¹ video franchise holders, the additional reporting requirements and the timetable set for renewal of video franchises. However, DRA recommends that the Commission modify the PD's proposed scope for a case-by-case review to include public/community meetings as discussed below.

II. DISCUSSION

A. Build-out and Anti-discrimination Provisions Applied to Smaller Franchise Holders

DRA supports the PD's broad approach to providing smaller telephone company video franchise holders with flexibility in deploying video service within their telephone service areas. The PD states:

...we do not need to establish different 'safe harbors'² for these video franchise holders to afford them flexibility. The flexibility that the smaller telephone companies seek is set forth within the four corners of the statute.³

The PD also delineates in the amended General Order (GO) 169 language that "(t)he application must contain clearly stated build-out milestones and must demonstrate a serious and realistic planning effort ..."⁴ Smaller franchisees should therefore carefully

¹ By smaller, we are referring to those video franchise applicants or holders with fewer than one million telephone customers within California, consistent with the PD and DIVCA.

² i.e. different than the larger telephone companies

³ CPUC, Opinion Resolving Issues in Phase II, R.06-10-005 (PD) at 14.

⁴ PD at 35.

plan their video build-out rather than over-relying on the type of flexibility that could lead to piecemeal deployment and “after-the-fact reasonableness review.”⁵

1. Low-Income/Non-discrimination Build-out Benchmarks

DRA, in its Comments in response to the Phase II Scoping Memo,⁶ discussed a potential problem for the smaller franchise holders to meet the low-income/non-discrimination build-out requirements of Public Utilities (PU) Code § 5890(a). DRA explained that some smaller franchise holders may be unable to comply with the low-income benchmarks in their telephone service areas if the number of low-income households is lower than that which would be needed to meet the benchmarks.⁷ The PD sensibly states that the smaller franchisees should be required to provide video access to low-income households within its service area in substantially the same proportion as to the total number of households.⁸ While not identical to DRA’s proposal, the PD’s proposed standard is very reasonable because it recognizes the need for flexibility based on local demographics. Accordingly, DRA supports the PD’s proposal and recommends that the Commission adopt it.

2. Case-by-Case Review

With regard to a case-by-case compliance review under PU Code § 5890(c), DRA explained its concerns regarding (1) the “reasonable time” for build-out, and (2) the option to not deploy video service in high-cost portions of the telephone service area under the statute’s “substantially above average cost” exemption in our previously-filed Reply Comments.⁹ In the case of “reasonable time,” DRA agrees with the PD’s

⁵ PD at 16.

⁶ Comments of the Division of Ratepayer Advocates on the Scoping Memo for Phase II, June 15, 2007 (DRA Comments) at 3-4.

⁷ *Id.*

⁸ PD at 15.

⁹ DRA Reply Comments of the Division of Ratepayer Advocates on the Scoping Memo for Phase II, June 15, 2007 (DRA Reply Comments) at 3-4.

emphasis on “clearly stated build-out milestones” established at the time of application.¹⁰ However, if a small franchise holder fails to meet its agreed-upon build-out timelines post-application, DRA reiterates that public/community meetings should be initiated as part of the Commission review so that information about the reasons for the delay can be provided to the public, and dialogue could take place concerning build-out options. Such meetings need not be formal, but should provide open discussion of local community communications needs with company representatives who can present the constraints and options. This process would be similar to the public discussions on local land use when a land developer seeks a rezoning or special use permit for a project.

In the case of exempting high-cost parts of a small telephone company’s service area from video build-out requirements because the deployment costs are “substantially above average cost,”¹¹ the statutory language “average cost of providing video service in that telephone service area”¹² is somewhat vague and might not be the most useful and effective sole way to assess economic viability of infrastructure build-out reasonableness and concomitant service availability or lack thereof. It would be relevant for the Commission to consider economic viability in addition to the “substantially above average cost” articulated benchmark in the statute. Additionally, the Commission should also make public/community meetings a required feature of the process whenever franchise applicants or holders request high-cost exemptions for particular parts of their service areas. This kind of public, open process is practical and economical within smaller telephone company service areas and would enable communities and service providers to engage in meaningful dialogue concerning economically viable service options that affect video availability. DRA therefore respectfully requests that the Commission consider requiring the use of informal public/community meetings in the above instances when PU Code § 5890(c) is invoked for a case-by-case review.

¹⁰ PD at 18.

¹¹ PU Code § 5890(c)

¹² *Id.*

Lastly, DRA again recommends that public/community meetings also be required in cases where socioeconomic discrimination in build-out violates the statutory requirements.

III. CONCLUSION

DRA generally supports the PD because it is reasonable and provides workable solutions. DRA therefore urges the Commission to adopt the PD, with the modifications described above and in DRA's Opening and Reply Comments.

Respectfully submitted,

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September 13, 2007

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of **“OPENING COMMENTS OF THE DIVISION OF RATEPAYER ADVOCATES ON COMMISSIONER CHONG’S PROPOSED DECISION RESOLVING DIVCA PHASE II ISSUES”** in **R.06-10-005** by using the following service:

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Dated at San Francisco, California this **13th** day of **September, 2007**.

/s/ ANGELITA MARINDA

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